No. 92-1856

IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

CITY OF LADUE, *et al.*,
Petitioners,
v.
MARGARET P. GILLEO,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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BRIEF OF THE NATIONAL INSTITUTE OF MUNICIPAL LAW OFFICERS, INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION, U.S. CONFERENCE OF MAYORS, NATIONAL LEAGUE OF CITIES, AND NATIONAL ASSOCIATION OF COUNTIES AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Amici will address the following question:

Whether the court of appeals erred in concluding that Ladue's sign ordinance, the purpose of which is to advance the City's interests in aesthetics and safety, is content-based and subject to strict scrutiny because it contains a small number of essential exceptions that do not reflect a governmental purpose to choose appropriate subjects for public expression or debate.

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INTEREST OF THE *AMICI CURIAE*

Amici, organizations whose members include city and county governments and officials throughout the United States, have a compelling interest in legal issues that affect local governments. The issue presented in this case, concerning the degree to which a local government can, consistent with the First

Amendment, regulate signs in the interest of avoiding visual blight and other problems, is a recurring one for jurisdictions throughout the country.

As evidenced by the Court's opinions in such cases as *Members of City Council v. Taxpayers for Vincent*, 466 U.S. 789 (1984), and *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490 (1981), the serious aesthetic problems caused by signs and billboards are difficult and ubiquitous. A commentator's assessment of the aesthetic and social costs of signage merely echoes the perceptions of any observant citizen. "In many cities, sign clutter dominates the streetscape, overshadowing buildings and trees, eroding cultural and architectural diversity, ruining scenic views and historic ambience and blighting whole neighborhoods." Edward T. McMahon, *Regulating Signs*, Main Street News, No. 70 at 1, 2 (National Trust for Historic Preservation, Aug. 1991). While aesthetic problems may be most pronounced in architecturally significant or unique planned communities like Ladue, they can arise anywhere. The need to regulate signs and billboards in the interest of traffic safety is likewise universal. *See, e.g., County of Cumberland v. Eastern Federal Corp.*, 269 S.E.2d 672, 677 (N.C. App.), *petition denied*, 273 S.E.2d 453 (N.C. 1980); *Ghaster Properties, Inc. v. Preston*, 200 N.E.2d 328, 335-36 (Ohio 1964) (quoting *Opinion of the Justices*, 103 N.H. 268, 270 (1961)).

The Court has repeatedly recognized that the broad protections of the First Amendment do not render cities powerless to address these problems in a meaningful way. As the Court explained in *Taxpayers For Vincent* in upholding an ordinance prohibiting the posting of signs on public property:

> The problem addressed by this ordinance—the visual assault on the citizens of Los Angeles presented by an accumulation of signs posted on public property—constitutes a significant substantive evil within the City's power to prohibit. '[T]he city's interest in attempting to preserve [or improve] the quality of urban life is one that must be accorded high respect.'

466 U.S. at 807 (citation omitted).

The Court has emphasized that in evaluating speech regulations for content-neutrality, "[t]he government's purpose is the controlling consideration." *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). "Government regulation of expressive activity is content-neutral so long as it is '*justified* without reference to the content of the regulated speech.'" *Id.* (collecting cases).

While acknowledging that the ordinance was viewpoint neutral, the court of appeals nonetheless concluded that it was content-based and subject to strict scrutiny because the ordinance's prohibition of signs contains a small number of essential exceptions. The net effect was to give no weight to the City's purpose of addressing the many problems resulting from visual blight. Contrary to the reasoning of the courts below, these essential, benign exceptions have nothing to do with controlling "'the choice of permissible subjects for public debate'" or "'government control over the search for political truth.'" Pet. App. 28a (opinion of district court, quoting *Consolidated Edison v. Public Service Comm'n*, 447 U.S. 530, 538 (1980)). Indeed, there is not a scintilla of evidence that Ladue's purpose was to suppress Gilleo's sign because of its message.

Like Ladue, many other jurisdictions have sought to preserve the unique architectural, historic, or scenic character of neighborhoods and districts by banning or heavily regulating most signs. In doing so, however, they, like Ladue, have had to confront the reality that a few discrete categories of signs, such as traffic signs, are so essential to a city's functioning that they cannot realistically be prohibited. Under the erroneous standard adopted by the court of appeals, all such laws are content-based and subject to strict scrutiny. Because the court of appeals' rigid, formalistic analysis misapprehends the complexity of the problems posed by sign proliferation, *amici* submit this brief to assist the Court in its resolution of the case.[1]

INTRODUCTION AND SUMMARY OF ARGUMENT

Amici wholeheartedly agree with the core constitutional tenet that "the First Amendment reflects a 'profound national commitment' to the principle that 'debate on public issues should be uninhibited, robust, and wide-open.'" *Boos v. Barry*, 485 U.S. 312, 318 (1988) (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)). This Court has, however, repeatedly recognized that the protection afforded to speech is "not absolute." *Kovacs v. Cooper*, 336 U.S. 77, 85 (1949). And while the "Court has long held that regulations enacted for the purpose of restraining speech on the basis of its content presumptively violate the First Amendment," *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 46-47 (1986), "[i]t has [also] been clear since this

[1] The parties have consented to the filing of this brief *amicus curiae*. Letters indicating their consent have been filed with the Clerk of the Court.

Court's earliest decisions concerning the freedom of speech that the state may sometimes curtail speech when necessary to advance a significant and legitimate state interest." *Taxpayers for Vincent*, 466 U.S. at 804 (citing *Schenck v. United States*, 249 U.S. 47, 52 (1919)); *see also Metromedia*, 453 U.S. at 502 (plurality opinion) (citing *Kovacs*) (recognizing government's "legitimate interest[] in controlling the noncommunicative aspects" of billboards).

In recognition of the fact that a particular medium of communication can impose significant substantive harms on the community, the Court has held that "expression, whether oral or written . . . is subject to reasonable time, place, or manner restrictions." *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984). The Court has also long recognized that "[e]ach method [of expression] tends to present its own peculiar problems." *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 503 (1952); *see also Metromedia*, 453 U.S. at 500-01 & n.8, 502 (plurality opinion). As Justice Jackson noted in *Kovacs*, each medium of expression "ha[s] differing natures, values, abuses and dangers." 336 U.S. at 97 (Jackson, J., concurring).

Signs, notwithstanding their venerable use as a "medium for expressing political, social and commercial ideas," *Metromedia*, 453 U.S. at 501 (plurality opinion) (citation omitted), are no exception. As the Court has recognized, the medium of signs imposes unique and substantial harms on the community, including visual blight, endangerment of traffic safety, and diminished property values with the consequential loss of tax revenue.

Consistent with these precepts, many cities have a strong interest in addressing the problems of visual

blight in architecturally significant, historic, or scenic areas. The most effective means of doing so would, of course, be a total ban on signs and billboards. *Cf. Taxpayers For Vincent*, 466 U.S. at 806-07 (indicating total ban is permissible). Yet, as Ladue recognized, it is impossible to impose such a regulatory scheme without creating a small group of essential, benign exceptions for traffic safety signs, identification signs, and the like. Under the rigid rule of content-neutrality adopted by the court of appeals, any such scheme is likely to be invalidated.

The exceptions which Ladue allows, however, do not demonstrate that its purpose is either to "favor some viewpoints or ideas at the expense of others," *Taxpayers For Vincent*, 466 U.S. at 804, or to "select which issues are worth discussing or debating." *Police Dep't v. Mosley*, 408 U.S. 92, 95 (1972). By allowing commercial enterprises and churches to display on-site identification signs, the City is doing no more than attempting to comply with the time, place or manner test's requirements that the ordinance be "narrowly tailored" and "leave open ample alternative channels for communication of the information." *Community For Creative Non-Violence*, 468 U.S. at 293.

Indeed, given this Court's holding in *Linmark Associates, Inc. v. Township of Willingboro*, 431 U.S. 85 (1977), which invalidated a ban on real estate "For Sale" signs, in part because there were no ample alternatives, city planners are placed in a veritable "catch-22." If a city prohibits too many signs, its ordinance may violate the time, place or manner test and the principles articulated in *Linmark*. Yet under the court of appeals' approach, if a city attempts to address this problem by excepting on-site commercial and church identification signs, it has engaged in

content-based discrimination and its ordinance will likely be invalidated under strict scrutiny review. But allowing on-site identification signs—which are linked to the particular zoning classification and permitted use of the property—does not raise any "realistic possibility that official suppression of ideas is afoot," *R.A.V. v. City of St. Paul*, 112 S.Ct. 2538, 2547 (1992), or that the government's purpose is to "select which issues are worth discussing or debating." *Mosley*, 408 U.S. at 95.

Nor do the ordinance's exceptions for various safety-related signs, road and driveway signs, and public transportation signs contravene the Court's content-neutrality jurisprudence. The governmental purposes in allowing these important messages, the promotion of the public safety and convenience, are too benign to raise any specter that the government's purpose is either to "favor some viewpoints or ideas at the expense of others," *Taxpayers For Vincent*, 466 U.S. at 804, or to "select which issues are worth discussing or debating." *Mosley*, 408 U.S. at 95. Thus, contrary to the holding of the court of appeals, Ladue's ordinance is fully " 'justified without reference to the content of the regulated speech' " and is content-neutral. *Rock Against Racism*, 491 U.S. at 791 (citation omitted). Accordingly, the ordinance should not be subjected to strict scrutiny, but should instead be reviewed under the remaining prongs of the Court's test for reasonable time, place, or manner regulations.[2]

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[2] *Amici* limit their presentation to a demonstration that the court of appeals erred in treating Ladue's ordinance as content-based. *Amici* do not address the complex issues involved in assessing whether the ordinance satisfies the remaining parts of the time, place, or manner test.

ARGUMENT

THE COURT OF APPEALS' FORMALISTIC APPROACH TO CONTENT NEUTRALITY ERRONEOUSLY FAILS TO EXAMINE THE CITY'S PURPOSES IN EXCEPTING CERTAIN SIGNS AND IMPROPERLY IMPEDES EFFORTS BY LOCAL GOVERNMENTS TO REGULATE SIGNS TO PREVENT VISUAL BLIGHT AND OTHER PROBLEMS

A. The Court Has Repeatedly Upheld the Power of Municipalities to Place Content-Neutral Restrictions on Expression In Order to Ameliorate Aesthetic Blight

As visual blight has come to be recognized as a serious societal problem demanding an effective response from government, the Court has often recognized that government can take meaningful steps to advance aesthetic and related values. This affirmation of the power of government to act in the public interest, initially made by the Court in zoning cases, has more recently been reiterated in the First Amendment context. The court of appeals' decision subverts this longstanding power of local government by imposing a standard for content-neutrality that no city can ever meet.

Beginning with *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926), the Court has repeatedly affirmed the authority of municipalities to regulate nuisances in order to advance aesthetic and related goals. For example, in *Berman v. Parker*, 348 U.S. 26, 32-33 (1954), the Court reaffirmed the broad scope of municipalities' power to preserve the public welfare, noting that the concept of public welfare "is broad and inclusive" and "[t]he values it represents are spiritual as well as physical, aesthetic as well as monetary." *Id.* at 33, *quoted in Taxpayers For Vincent*, 466 U.S. at 805. The *Berman* Court held that it was "within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled." *Id.* at 33. The Court accordingly upheld the condemnation of blighted housing to advance aesthetic ends, because such housing "may be an 'ugly sore, a blight on the community which robs it of charm, which makes it a place from which men turn.'" *Id.* at 32-33, *quoted in Taxpayers For Vincent*, 466 U.S. at 805. *See also Village of Belle Terre v. Boraas*, 416 U.S. 1, 9 (1974) (city has legitimate interest in preserving places where "the blessings of quiet seclusion and clean air make the area a sanctuary for people"); *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104, 129 (1978) ("New York City's objective of preserving structures and areas with special historic, architectural, or cultural significance is an entirely permissible governmental goal.").

More recently, the Court has held that the First Amendment does not preclude cities from undertaking meaningful steps to advance aesthetic and related interests. On the contrary, even in the context of First Amendment challenges the Court has recognized that "municipalities have a weighty, essentially esthetic interest in proscribing intrusive and unpleasant formats for expression." *Taxpayers For Vincent*, 466 U.S. at 806. For example, in *Taxpayers for Vincent* the Court reaffirmed that a city is not powerless "to protect its citizens from unwanted exposure to certain methods of expression which may legitimately be deemed a public nuisance." *Taxpayers For Vincent*, 466 U.S. at 806 (citing *Kovacs*).

Thus, the Court has upheld, in different contexts, limitations directed at the noncommunicative aspects of expression where those limitations are necessary to address a public nuisance and restore tranquillity to the community. Most recently, in *Rock Against Racism* the Court upheld a city law requiring performers using a public amphitheater to use the sound system and technician provided by the city, on the grounds that the city had an interest in controlling noise levels "in order to retain the character of the [nearby] Sheep Meadow and its more sedate activities, and to avoid undue intrusion into residential areas and other areas of the park." 491 U.S. at 792. Likewise, in *Frisby v. Schultz*, 487 U.S. 474 (1988), the Court upheld a municipality's prohibition on picketing in front of homes, citing the city's power to ensure "residential privacy" and protect "the unwilling listener." *Id.* at 484.

Billboards and signs, like these other modes of expression, frequently conflict with cities' interests in preserving the aesthetic quality of the community and advancing safety and other concerns. *See, e.g., Metromedia*, 453 U.S. at 502 (plurality opinion) ("[B]ecause it is designed to stand out and apart from its surroundings, the billboard creates a unique set of problems for land-use planning and development."). It is unquestionably within the power of a city to address both the safety and aesthetic problems such signage presents. *See id.* at 506-07 (plurality opinion) (collecting cases). Indeed, the Court has recognized that municipalities' strong interest in avoiding "visual clutter" would justify a complete ban on billboards. *See Taxpayers For Vincent*, 466 U.S. at 806-07 (citing various opinions in *Metromedia*). And in

Taxpayers For Vincent the Court held that "the visual assault on the citizens of Los Angeles" created by "an accumulation of signs" on public property "constitutes a significant substantive evil within the City's power to prohibit." *Id.* at 807. *See also Metromedia*, 453 U.S. at 510 (plurality opinion); *id.* at 552 (opinion of Stevens, J.); *id.* at 559-61 (Burger, C.J., dissenting). The Court has also recognized that legislatures may reasonably conclude that signs pose a traffic safety hazard. *Railway Express Agency, Inc. v. New York*, 336 U.S. 106, 109 (1949); *see also Metromedia*, 453 U.S. at 509 (plurality opinion); *id.* at 555, 560 (Burger, C.J., dissenting).

Contrary to these teachings, the decision below prevents land use planners from ever being able to adequately address the "visual assault . . . presented by an accumulation of signs," notwithstanding this Court's recognition that such signage "constitutes a significant substantive evil within the City's power to prohibit." *Taxpayers For Vincent*, 466 U.S. at 807. Likewise, it prevents cities from adequately addressing the danger to traffic safety caused by sign proliferation. *Cf. Railway Express Agency*, 336 U.S. at 109. Finally, it prevents cities from taking effective steps to preserve property values and the tax base. *See Metromedia*, 453 U.S. at 552 (opinion of Stevens, J.).

The First Amendment does not require the heavy constraints which the court of appeals placed on the ability of local governments to redress aesthetic and other concerns through sign regulations. Rather, these constraints result from the court of appeals' failure to examine Ladue's underlying purposes in creating the exceptions to the ordinance's general prohibition of signs.

B. Ladue's Ordinance Is Content-Neutral Because Its Regulation of Signs Is Justified Without Reference to Content

As the court of appeals recognized, Ladue, in furtherance of its substantial interests in preserving the aesthetics of the community, enhancing traffic safety, and maintaining the value of real estate, enacted an ordinance which generally prohibits the display of signs within the city. Pet. App. 2a. The ordinance, however, provides a small number of essential, benign exceptions to this general prohibition. *Id.; see also* Pet. App. 40a-41a. The ordinance thus allows for the display of the following signs: municipal signs; subdivision and residence identification signs; road and driveway signs; health inspection signs; school, church and religious institution signs announcing the institutions' names, services, activities and functions; signs identifying non-profit organizations, public transportation stops and safety hazards; on-site commercial signs in districts zoned for commercial or industrial use, and ground signs advertising the sale or rental of real estate. *Id.*

Relying on the plurality opinion in *Metromedia*, the court of appeals concluded that Ladue's ordinance discriminated on the basis of content for two reasons. First, the court reasoned that the ordinance "favors commercial speech over noncommercial speech" because it "permits commercial signs in districts zoned for commercial or industrial use [while] it prohibits most noncommercial signs in those districts." Pet. App. 4a & n.4. Second, the court asserted, without elaboration, that the ordinance "favors certain types of noncommercial speech over others." *Id.* As the district court held, the ordinance's exceptions for "certain signs bearing noncommercial messages such as municipal signs, subdivision identification signs, residence identification signs, certain road signs and health inspection signs" demonstrate "content selectivity with respect to noncommercial speech . . . allow-[ing] the City to determine 'which issues are worth discussing or debating . . . .'" Pet. App. 28a (quoting *Mosley*, 408 U.S. at 96). *See also id.* at 4a.

This formalistic rationale plainly fails to support the court of appeals' conclusion that Ladue's ordinance discriminates on the basis of content. As set forth below, these various exceptions do not demonstrate that Ladue's purpose is to discriminate on the basis of content. On the contrary, the purpose of the City's exceptions is to permit the minimum signage possible consistent with the advancement of the City's interests in safety and aesthetics, as well as with the Constitution.[3] It is thus clear that, under this Court's cases, the ordinance is content-neutral.

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[3] The legislative record fully demonstrates that petitioners' ordinance was enacted with the purpose of addressing the harms caused by sign proliferation. As the findings accompanying the ordinance state:

> the proliferation of an unlimited number of signs in private, residential, commercial, industrial, and public areas of the City of Ladue would create ugliness, visual blight and clutter, tarnish the natural beauty of the landscape as well as the residential and commercial architecture, impair property values, substantially impinge upon the privacy and special ambience of the community, and may cause safety and traffic hazards to motorists, pedestrians, and children[.]

Pet. App. 36a. Moreover, the record on summary judgment demonstrates that these findings are not simply camouflage for an attempt to suppress speech on the basis of its content.

As the Court has explained, "[t]he principal inquiry in determining content neutrality . . . is whether the government has adopted a regulation of speech because of its disagreement with the message it conveys." *Rock Against Racism*, 491 U.S. at 791; *see also Community For Creative Non-Violence*, 468 U.S. at 295. The Court has also noted "that a regulation that 'does not favor either side of a political controversy' is nonetheless impermissible because the 'First Amendment's hostility to content-based regulation extends . . . to prohibition of public discussion of an entire topic.'" *Boos*, 485 U.S. at 319 (quoting *Consolidated Edison Co.*, 447 U.S. at 537). In determining whether a regulation is content-neutral, "[t]he government's purpose is the controlling consideration." *Rock Against Racism*, 491 U.S. at 791. Accordingly, the Court has frequently stated that "[g]overnment regulation of expressive activity is content-neutral so long as it is '*justified* without reference to the content of the regulated speech.'" *Id.* (emphasis in original) (quoting *Community For Creative Non-Violence*, 468 U.S. at 293).

The court of appeals expressly "recognize[d] that the ordinance is viewpoint neutral." Pet. App. 4a

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The affidavit of Malcolm C. Drummond, a professional city planner with more than forty years' experience (including nearly thirty years in the St. Louis, Missouri area), demonstrates not only that Ladue has engaged in a longstanding and comprehensive effort to maintain the aesthetics of the community, but also that sign proliferation poses a substantial safety hazard. J.A. 144-57. The Drummond affidavit also demonstrates that, unlike Ladue, other cities in the St. Louis area which do not limit signs experience visual blight. *Id.* at 154-56.

n.5. Therefore, the court of appeals' conclusion that the ordinance discriminates on the basis of content must rest on the premise that the ordinance's exceptions demonstrate that Ladue's purpose is to choose the subject matter of public debate. *See* Pet. App. 4a (citing *National Advertising Co. v. Town of Niagara*, 942 F.2d 145, 147 (2d Cir. 1991); *National Advertising Co. v. City of Orange*, 861 F.2d 246, 248-49 (9th Cir. 1988)). This premise is erroneous.

As an initial matter, *amici* question the court of appeals' reliance on the City's regulations regarding signage in commercially zoned districts for assessing the validity of its regulations for residential districts. Notwithstanding the fact that the City allows commercial signs in commercial districts, the City prohibits both commercial and non-commercial signs in residential areas. Respondent could no more have displayed a sign advertising an auto repair shop than one expressing opposition to the Persian Gulf war. The Court has, of course, long recognized the unique importance of residential neighborhoods as a refuge from "'the hurlyburly of the outside business and political world.'" *Carey v. Brown*, 447 U.S. 455, 471 (1980) (quoting *Gregory v. Chicago*, 394 U.S. 111, 118 (1969) (Black, J., concurring)). That the City allows commercial premises to display on-site "commercial signs" in its commercially zoned districts is not probative of whether its purpose in prohibiting signs in residential areas is "content-based." The differing characters and purposes of commercially and residentially zoned districts justify the disparate treatment.

In addition, there are two other reasons why the court of appeals' analysis is in error. First, as dis-

cussed *infra* at 17-21, the decision below fails to recognize the considerable tension that exists between the concept of content neutrality and the requirements that a time, place or manner restriction be "narrowly tailored to serve" the government's significant interests and "leave open ample alternative channels for communication." *Community For Creative Non-Violence*, 468 U.S. at 293. Ladue's sign ordinance has necessarily been tailored to the different permitted uses under its zoning plan, as well as to the holding of *Linmark Associates, Inc. v. Township of Willingboro*, 431 U.S. 85 (1977). In accordance with Ladue's land use and zoning scheme and the character of the activity taking place on site in commercial districts, the City allows certain types of signs in commercially zoned areas which are not allowed in residential areas. Thus, in allowing commercial signs on commercially zoned properties, the ordinance simply reflects the character of the activity taking place on the premises, not an intent to suppress certain messages.

Second, as discussed *infra* at 21-23, the ordinance's remaining exceptions for municipal signs, road and driveway signs, health inspection signs, public transportation and stop signs, and safety hazard signs, allow signs that indisputably convey important messages. *Amici* respectfully submit, however, that the governmental purposes in allowing these messages—the promotion of the public safety and convenience—are too benign to raise any specter that the government's goal is to "select which issues are worth discussing or debating," *Mosley*, 408 U.S. at 96, or to "'prohibit[] . . . public discussion of an entire topic.'" *Boos*, 485 U.S. at 319 (quoting *Consolidated Edison Co.*, 447 U.S. at 537).

C. The Ordinance's Exceptions For Commercial And Church Signs Are Justified Because There Are No Ample Alternatives To On-Site Identification Signs

The reasoning of the court of appeals places municipal land use planners in a veritable "catch-22" which greatly jeopardizes their ability to adequately address such serious problems as visual blight, traffic safety, and maintaining the property tax base. If, for example, the City attempted to redress the purported content-discrimination by extending its prohibition to commercial signs and church signs, it would risk running afoul of the time, place or manner test's requirements that the ordinance be "narrowly tailored" and "leave open ample alternative channels for the communication of the information." *See Community For Creative Non-Violence*, 468 U.S. at 293; *see also Linmark*, 431 U.S. at 93. Yet, under the court of appeals' approach, the City's attempt to satisfy these constitutional requirements by allowing businesses to have commercial signs and churches to have announcement signs renders its ordinance content-based and subject to strict scrutiny.

The flaw in the court of appeals' reasoning is underscored by the analysis of *Linmark*. In *Linmark*, the Court invalidated a municipal ordinance prohibiting the posting of real estate "For Sale" signs. 431 U.S. at 86. In doing so, the Court rejected the municipality's argument that the ordinance was permissible as a time, place or manner regulation. *Id.* at 93-94. In the Court's view, "serious questions exist[ed] as to whether the ordinance 'le[ft] open ample alternative channels for communication.'" *Id.* at 93 (quoting *Virginia Pharmacy Bd. v. Virginia Citizens Consumer Council*, 425 U.S. 748, 771 (1976)). While recognizing that "in theory sellers remain free to employ a number of different alter-

natives" in selling their homes, the Court deemed "[t]he options to which sellers realistically are relegated—primarily newspaper advertising and listing with real estate agents" not to be ample alternatives for three reasons. *Id.* First, these options "involve[d] more cost and less autonomy than 'For Sale' signs." *Id.* (citations omitted). Second, they were "less likely to reach persons not deliberately seeking sales information." *Id.* (citations omitted). Finally, such options might "be ~~less effective~~ media for communicating the message that is conveyed by a 'For Sale' sign in front of the house to be sold." *Id.* (citation omitted).

Amici respectfully submit that a sign ordinance prohibiting commercial establishments from displaying on-site identification signs could be vulnerable to the same criticisms which led to the invalidation of the ordinance in *Linmark*. While commercial establishments could, of course, advertise their street location through newspapers or other mediums such as television or radio, those options would entail far more cost. And without being able to display an on-site identification sign, a commercial establishment would be unlikely to attract the patronage of those individuals just passing through the town or unfamiliar with its location.

Accordingly, *Linmark* suggests that such an ordinance might not satisfy the test for time, place or manner regulations because it would not "leave open ample alternative channels for communication of the information." *Community For Creative Non-Violence*, 468 U.S. at 293. But under the court of appeals' rationale, the city's attempt to address this problem by excepting the on-site identification signs of commercial establishments amounts to content-based dis-

crimination. *See* Pet. App. 4a & n.4 (concluding that Ladue's ordinance is "content-based" because it "favors commercial speech over noncommercial speech" by "permit[ting] commercial signs in districts zoned for commercial or industrial use, but . . . prohibit[ing] most noncommercial signs in those districts").

Amici respectfully submit that the court of appeals' rationale is erroneous not only because it fails to recognize the constitutional basis for the exception for on-site identification signs, but also because it fails to take into account the nexus between the particular sign and the zoning classification or permissible use of the property. Under the court of appeals' approach, any exceptions a city allows in a sign ordinance for the on-site identification of a premises renders an ordinance content-based—no matter how closely tied the exceptions are to the particular zoning classification or permissible use of a property. Yet allowing an exception for an on-site identification sign plainly does not raise any "realistic possibility that official suppression of ideas is afoot," *R.A.V.*, 112 S.Ct. at 2547, or that the government's purpose is to "choose 'which issues are worth discussing or debating.'" *Consolidated Edison Co.*, 447 U.S. at 538 (quoting *Mosley*, 408 U.S. at 96). Indeed, there is not a scintilla of evidence that Ladue's sign ordinance was enacted in order to suppress speech based on its content. *Cf. Linmark*, 431 U.S. at 95-97 (prohibition of "For Sale" signs invalid because directed at content of signs).

The court of appeals' disregard of the nexus between the permitted on-site identification signs and the underlying properties' permitted uses has dis-

turbing ramifications for the ability of city planners to regulate for the common good. Because under the court of appeals' rationale Ladue has engaged in content-discrimination, the court of appeals' holding casts serious doubt on whether Ladue, or thousands of other municipalities throughout the country, can even ban commercial signs in residential neighborhoods. But just as "a pig in the parlor instead of the barnyard" can be a nuisance, *Ambler Realty*, 272 U.S. at 388, so too can be signs which have no nexus to a property's use. It can hardly be disputed that if respondent had placed a sign on her property advertising a local pizza parlor, that sign would be an eyesore. But under the court of appeals' rationale, Ladue's ordinance is content-based and any attempt to prohibit such signs would likely be invalidated under strict scrutiny review. The court of appeals' problematic approach to content-neutrality analysis effectively denies municipal officials the authority to take narrowly tailored measures to address the "the substantive evil—visual blight—. . . created by the medium of expression itself." *Taxpayers For Vincent*, 466 U.S. at 810; *cf. City of Renton*, 475 U.S. at 48 (upholding zoning ordinance directed at adult theaters because city's " 'predominate' intent" was to "prevent crime, protect the city's retail trade, maintain property values, and generally 'protec[t] and preserv[e] the quality of [the city's] neighborhoods, commercial districts, and the quality of urban life.' ") (citation omitted).

The court of appeals' analysis is contrary to the Court's repeated admonition that "[t]he government's purpose is the controlling consideration" in assessing content neutrality, *Rock Against Racism*, 491 U.S. at 791, and that "[g]overnment regulation of expressive activity is content-neutral so long as

it is '*justified* without reference to the content of the regulated speech.' " *Id.* (quoting *Community for Creative Non-Violence*, 468 U.S. at 293). Ladue's exceptions for on-site identification signs are linked to the particular premise's zoning classification and character of use and are themselves designed to ensure that the sign prohibition will not contravene this Court's requirement that the ordinance "leave open ample alternative channels for communication." *Linmark*, 431 U.S. at 93 (quoting *Virginia Pharmacy Bd. v. Virginia Citizens Consumer Council*, 425 U.S. 748, 771 (1976)). Accordingly, the ordinance "is '*justified* without reference to the content of the regulated speech' " and is content-neutral. *Rock Against Racism*, 491 U.S. at 791 (quoting *Community For Creative Non-Violence*, 468 U.S. at 293).

D. The Ordinance's Exceptions for Signs Promoting Public Safety and Convenience Do Not Render the Ordinance Content-Based

In addition to on-site identification signs, the ordinance also permits municipal signs such as traffic control signs, no parking signs, and road signs; health inspection signs; safety hazard signs; and signs denoting public transportation stops. Pet. App. 40a-41a. These signs can, of course, be characterized, as the district court characterized them, as conveying "non-commercial" messages. *See* Pet. App. 28a. *Amici* submit, however, that these signs cannot validly be the basis for the court of appeals' unexplained conclusion that the ordinance "favors certain types of noncommercial speech over others," Pet. App. 4a, or for the holding of the district court that such signs demonstrate that Ladue's purpose was "to

determine 'which issues are worth discussing or debating . . . .'" Pet. App. 28a (quoting *Mosley*, 408 U.S. at 96).

As the Court has frequently stated, "[t]he government's purpose is the controlling consideration" in assessing content neutrality. *Rock Against Racism*, 491 U.S. at 791. The aforementioned signs, which have long been indispensable to the nation's cities and towns, unquestionably convey important messages—one need only imagine the result of removing stop signs from a busy intersection. But to suggest, as the district court did, that permitting such signs demonstrates that Ladue's purpose is "to determine 'which issues are worth discussing or debating,'" or that it is attempting to gain "control over the search for the political truth," Pet. App. 28a, trivializes the First Amendment. It is evident that the government's purpose in excepting such signs is the promotion of the public safety and convenience, not the " 'prohibition of public discussion of an entire topic,' " *Boos*, 485 U.S. at 319 (quoting *Consolidated Edison Co.*, 447 U.S. at 537), or the choosing of the "permissible subjects for public debate." *Consolidated Edison Co.*, 447 U.S. at 538.[4] Indeed, a prohibition of these signs would undermine the City's stated purpose of promoting public safety. To the extent the court of appeals' conclusion that Ladue's ordinance "favors certain types of noncommercial speech

[4] *Amici* acknowledge that the ordinance also excepts signs advertising the sale or rental of real estate. Pet. App. 41a. This exception, which is required by state law, *see* Mo. Rev. Stat. § 67.317 (1992), does not demonstrate that the City's purpose is to choose the appropriate subject matter for public debate. *Cf. Linmark*, 431 U.S. at 92-96 (invalidating municipal prohibition of "For Sale" signs).

over others" rests on the ordinance's exceptions for signs promoting public safety and convenience, it is erroneous because these exceptions are not indicative of a governmental purpose to engage in content-discrimination.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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